

**Applicant:** James A. Proctor Jr.  
**Application No.:** 09/772,176

**REMARKS/ARGUMENTS**

After the foregoing Amendment, claims 1, 2, 5-22, and 25-42 are currently pending in this application. Claims 3, 4, 23, and 24 have been canceled without prejudice. Claims 1, 21, 41, and 42 have been amended. Claim 1 has been amended by incorporating features of canceled claims 3 and 4. Claim 21 has been amended by incorporating features of canceled claims 23 and 24. Claims 41 and 42 have been amended by incorporating features similar to those incorporated into claims 1 and 21. Claim 42 has also been amended in accordance with paragraph 3, page 2 of the Office Action and to clarify language. Applicant submits that no new matter has been introduced into the application by these amendments.

**Claim Objections**

The Office objected to claim 42 based on MPEP 2106 and "the interim guidelines for patent applications for patent subject matter eligibility claimed." The Office recommends changing terminology in claim 42 to be consistent with language discussed in the aforementioned documents.

The Office does not specify where the "interim guidelines" are to be found. The Applicant respectfully submits that MPEP 2106 does not require the recommended changes. In the interest of furthering prosecution, however, claim 42 has been amended in accordance with the objection. The withdrawal of the objection to claim 42 is therefore respectfully requested.

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**Claim Rejections - 35 USC §112**

Claim 42 stands rejected under 35 USC §112 first paragraph as failing to comply with the written description requirement on the grounds that "computer readable medium" is not disclosed in the specification. Applicants respectfully submit that a person of ordinary skill in the art would understand that a "computer readable medium" is inherent in the specification. For example, on page 10, lines 4-5, the specification, referring to Figure 3, states "... a processor in the mobile station 105 executes the process 300" (emphasis added). It would be understood as inherent by a person of ordinary skill in the art that in order for the processor to execute the process it must follow instruction stored in a medium.

Based on the argument presented above, withdrawal of the rejection of claim 42 under 35 USC §112 is respectfully requested.

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**Claim Rejections - 35 USC §102**

Claims 1-14, 18-34 and 38-42 stand rejected under 35 USC §102(e) as being anticipated by Porter et al. (U.S. Patent No. 6,977,912) hereinafter referred to as "Porter".

Applicants respectfully submit that claim 1, as amended, is patentable over Porter for the reasons set forth below.

Claim 1 recites a feature not contained in Porter, namely

In at least one station, calculating a metric of a modulated signal indicative of motion of at least one of the stations or motion of objects in the signaling path...

(emphasis added).

In contrast to the present application the Porter invention is concerned with switching between channels of different frequencies in response to interference occurring in communications between a fixed base station and a terminal in a fixed position. See for example, Porter, column 6 lines 3-5; columns 6 lines 42-45. On page 3 of the Office Action last paragraph the office refers to Porter column 1, lines 58-67 as disclosing a fixed base station and the mobile subscriber terminal. However the word "mobile" does not occur in those lines. Applicant respectfully submits, therefore, that claim 1 as amended is not anticipated by Porter, and that Porter in fact, teaches away from the above quoted feature of claim 1.

Claims 21, 41 and 42, while not identical to claim 1, contain a feature similar to that quoted above in claim 1. Applicants therefore respectfully submit that Claims 21, 41 and 42 are also patentable over Porter.

Claims 2, and 5-20 are dependent, either directly or indirectly, from claim 1 and are therefore patentable over Porter for at least the reasons given above

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concerning claim 1. Claims 22, and 25-40 are dependent, either directly or indirectly, from claim 21 and are therefore patentable over Porter for at least the reasons given above concerning claim 21.

Based on the arguments presented above, withdrawal of the rejection of claims 1-14, 18-34 and 38-42 under 35 USC §102(e) is respectfully requested.

**Claim Rejections - 35 USC §103**

Claims 15-17 and 35-37 stand rejected under 35 USC §103(a) as being unpatentable over Porter in view of McNicol et al. (U.S. Patent No. 9,540,454). Applicants respectfully submit that claims 15-17 and 35-37 are patentable over the cited art for the reasons set forth below.

Claims 15-17 are dependant from claim 1. Claims 35-37 are dependant from claim 21. As argued above, claims 1 and 21 both recite a feature not contained in Porter. McNicol does not remedy this deficiency. The invention of McNicol is concerned only with fixed subscriber units. See for example, McNicol column 6 lines 3-8. Therefore, Porter and McNicol cannot be combined combined to teach all features of claims 15-17 and 35-37.

Based on the arguments presented above, withdrawal of the rejection of claims 15-17 and 35-37 under 35 USC §103(a) is respectfully requested.

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**Conclusion**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing Amendment and Remarks, Applicants respectfully submit that the present application, including claims 1, 2, 5-22, and 25-42, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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